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UNITED STATES DISTRICT COURT

**DISTRICT OF NEVADA**

13 JOSEPH MIZZONI, ) 3:11-cv-00358-HDM-WGC  
14 Plaintiff, )  
15 vs. ) ORDER  
16 STATE OF NEVADA, et al., )  
17 Defendants. )

Before the court is the report and recommendation of the  
United States Magistrate Judge (#27). In the report and  
recommendation, the magistrate judge recommends that this court  
enter an order granting in part and denying in part, the  
defendants' motion to dismiss (#14). Both plaintiff and defendants  
objected (## 28, 29).

The court has considered the pleadings and memoranda of the parties and other relevant matters of record. It has made a review and determination in accordance with the requirements of 28 U.S.C. § 636 and applicable case law. Based on this review, the court

1 hereby adopts and modifies the report and recommendation as  
2 follows:

3 Defendant Dr. Robert Bannister's motion to dismiss for failure  
4 to state a claim is **DENIED**;

5 Defendant E.K. McDaniel's motion to dismiss for failure to  
6 state a claim is **GRANTED WITH LEAVE TO AMEND**;

7 Defendant Bannister's motion to dismiss on qualified immunity  
8 grounds is **DENIED**;

9 Defendant Bannister's motion to dismiss plaintiff's official  
10 capacity claim for monetary damages is **GRANTED**;

11 Finally, the magistrate judge's recommendation that defendant  
12 Dr. Kent Robertson, improperly named as Mr. Robinson, be dismissed  
13 pursuant to Rule 4(m) is **DENIED**. The court granted the plaintiff's  
14 oral application to amend the complaint to correct the spelling of  
15 defendant Robertson's name. (#50). Defendant Robertson was served  
16 with a copy of the summons and the complaint, and has accepted  
17 service and filed an answer (#48).

18 **IT IS SO ORDERED.**

19 DATED: This 23rd day of August, 2012.

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22 UNITED STATES DISTRICT JUDGE  
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